

ILL. C. C. DOCKET NO. 00-0007

EXHIBIT No. 1

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Witness STEPHENS

Date 3-2-00 Reporter CB

ILLINOIS COMMERCE COMMISSION

On its own motion,

No. 00-0007

Requirements governing the form and content of
contract summaries for the neutral fact-finder
process for 2000 under Section 16-112(c) of
the Public Utilities Act.

AFFIDAVIT

ROBERT R. STEPHENS, being duly sworn, does depose and state as follows:

1. Affiant is a Senior Consultant in the firm of Brubaker & Associates, Inc., 1215 Fern Ridge Parkway, Suite 208, St. Louis, Missouri, 63141, who has prepared and has filed rebuttal testimony on behalf of the Illinois Industrial Energy Consumers, in the above proceeding. The rebuttal testimony consists often (10) pages of questions and answers (including a corrected Page 6) and Appendix A - Qualifications consisting of two (2) pages.

2. The correction on Page 6 changes "4.5" on line 103 to "4.8".

3. The statements contained in the aforesaid testimony, filed by the Affiant in this proceeding, are true and correct.

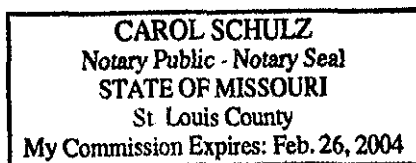
4. Further Affiant sayeth not.

DATED this 8th day of March, 2000.

Robert R. Stephens

ROBERT R. STEPHENS

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 8th day of March, 2000.



Carol Schulz
NOTARY PUBLIC 24921.1

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
Requirements governing the form and)	No. 00-0007
content of contract summaries for the)	
neutral fact-finder process for 2000)	
under Section 16-112(c) of the)	
Public Utilities Act.)	

Rebuttal Testimony of Robert R. Stephens

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Robert R. Stephens; 1215 Fern Ridge Parkway, Suite 208, St. Louis, MO 63141-
3 2000.

5 **Q BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A I am a consultant in the field of public utility regulation with the firm of Brubaker &
7 Associates, Inc., energy economic and regulatory consultants.

9 **Q PLEASE STATE YOUR QUALIFICATIONS AND EXPERIENCE.**

10 A These are included as Attachment A.

11

11 **Q** ON WHOSE BEHALF ARE YOU APPEARING?

12 A I am appearing on behalf of the Illinois Industrial Energy Consumers (IIEC). The
13 IIEC is a large group of industrial customers taking service from the various Illinois
14 electric utilities.

15

16 **Q** WHAT IS THE INTEREST OF **IIEC** IN THIS DOCKET?

17 A IIEC members are vitally interested in the development of a competitive market for
18 the electric industry in the State of Illinois. **IIEC** participated in the legislative process
19 leading to the Customer Choice Law of 1997 and has participated in most of the
20 related proceedings before the Illinois Commerce Commission (Commission or ICC)
21 since the passage of the law. **IIEC** recognizes the importance of the Neutral Fact
22 Finder (NFF) related processes to the development of the market and on customers'
23 costs.

24

25 **Q** WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS
26 PROCEEDING?

27 A I am responding to certain points within the direct testimonies of Central Illinois
28 Public Service Company, d/b/a **AmerenCIPS** and Union Electric Company d/b/a
29 **AmerenUE** (collectively "Ameren") witness Wade A. Miller, Illinois Power Company
30 (**IP**) witness David W. Hastings, and Commonwealth Edison Company (**ComEd**)
31 witness Michael M. **Feerick**.

32 My failure to address any of the other components of the testimonies of the
33 witnesses identified above or my failure to address the testimony of any other witness
34 should not be considered as agreement with the points they raise.

35 **Q PLEASE SUMMARIZE YOUR RECOMMENDATIONS TO THE**
36 **COMMISSION.**

37 A In its Order in this case and in its directions to the NFF, I recommend the Commission
38 adopt the following concepts:

- 39 1. That in unbundling retail contracts, parties' expectations about future PPO prices
40 or market cost of power have no bearing;
41
42 2. That in unbundling retail contracts, the resultant market values after deduction of
43 delivery service charges and transition charges can reflect the statutorily
44 prescribed mitigation factor, the negotiated contract price, and the prior year
45 market value; and
46
47 3. That the Commission and the NFF should take great care to ensure that transition
48 charges used in unbundling retail contracts are properly calculated, as prescribed
49 by law.
50

51 The reasons for these recommendations will be made clear in the remainder of
52 this testimony.
53

54 **Response to Ameren Witness Miller**

55 **Q HAVE YOU REVIEWED THE TESTIMONY OF AMEREN WITNESS WADE**
56 **A. MILLER?**

57 A Yes, I have. My response is limited to his testimony related to bundled retail
58 contracts.
59

60 **Q AT PAGE NINE OF HIS TESTIMONY, MR. MILLER STATES THAT "IT IS**
61 **INEVITABLE THAT THE NFF PROCESS WILL CREATE A SELF-**
62 **FULFILLING PROPHECY WITH RESPECT TO THE 'MARKET VALUE' IN**
63 **RETAIL CONTRACTS REPORTED TO THE NFF ON AN ONGOING**
64 **BASIS." HE GOES ON TO STATE THAT "THIS IS BECAUSE RETAIL**

65 **CONTRACTS MUST (GENERALLY) BE COMPETITIVE WITH**
66 **CUSTOMERS' PPO OPTIONS." DO YOU AGREE WITH THIS**
67 **CHARACTERIZATION?**

68 A No, I have two points of disagreement. First, while it is not clear what Mr. Miller
69 means by "create a self-fulfilling prophecy," as I will. explain later in this testimony, a
70 properly unbundled contract will not necessarily result in the prior market value.

71 Second, I also disagree with his characterization that retail contracts must
72 (generally) be competitive with customers' PPO options. It is my understanding that
73 the retail contracts subject to reporting are those entered into subsequent to the
74 enactment of the 1997 amendments to the Public Utilities Act (Act). The market price
75 embedded in the current PPO was not known with any confidence until nearly October
76 of 1999. In fact, for at' least one utility (IP), the ultimate market value to be used is
77 still subject to final approval by the Commission.

78 The retail contracts at issue are the subject of negotiation and a myriad of
79 variables considered by the counterparties in reaching the final prices. These could
80 include: bundled tariff rate, term of contract, reliability of supply, pricing incentives,
81 alternative proposals, cash management, and convenience, among others. A
82 customer's PPO option (which may not even be available for many customers), is only
83 one of many things a customer might consider in reaching the final price.

84 Consequently, depending on the ultimate retail contract price, what is left after
85 subtracting charges for delivery services, including transition charges, may be
86 significantly different from the market value underlying the prior transition charge

87

87 **Response to IP witness Hastings**

88 **Q HAVE YOU REVIEWED THE DIRECT TESTIMONY OF IP WITNESS**
89 **DAVID W. HASTINGS?**

90 **A Yes, I have. Mr. Hastings states IP's view on the unbundling portion of the**
91 requirements of the NFF contract reporting process and attempts to illustrate an
92 alleged bias in determining market values utilizing an unbundling process which
93 incorporates last year's NFF value. His illustration is included as IP Exhibit 1.2,
94 attached to his testimony. I have replicated the information shown on his exhibit for
95 convenience below.

Illinois Power Company	
Derivation of Market Value for Retail Contract	
<u>Unbundling Example</u>	
A)	Transition Charge Estimation Process
5.0	Base Revenue
0.4	Delivery Service Revenues
<u>3.0</u>	[NFF] market value from latest NFF report
1.6	Lost Revenue
<u>0.5</u>	Mitigation Amount
1.1	Transition Charge
B)	Determination of Market Value
4.5	Retail Contract Price
0.4	Delivery Service Revenues
<u>1.1</u>	Transition Charge
3.0	*Market Value
* Residual Amount Based on Predetermined [NFF] Market Values	

96 **Q PLEASE COMMENT ON MR HASTINGS' ILLUSTRATION.**

97 A I find Mr. Hastings' illustration misleading, in that the retail contract price chosen
98 (4.5¢ per kWh) is the one and only value that results in a 3.0¢ per kWh market value
99 and therefore corroborates his claim. Had he made any other assumption on the retail
100 contract price, the resultant market value would have varied from the 3.0¢ per kWh
101 value. For example, if the utility had been able to get a customer to agree to a retail
102 contract price of 4.8¢ per kWh, the resulting market value to be reported would be
103 3.3¢ per kWh ($4.8 - 0.4 - 1.1 = 3.3$).

104 Conversely, had the customer been able to negotiate a better retail contract
105 price, such as 4.2¢ per kWh, the resulting market value to be reported would be 2.7¢
106 per kWh ($4.2 - 0.4 - 1.1 = 2.7$).

107 Consequently, the market value reported as a result of the unbundling process
108 can vary significantly from the prior year's NFF reported value, depending on the
109 retail contract price. In fact, as I will illustrate later, should the agreed retail contract
110 price be the same as the rate used to calculate base revenues in the transition charge
111 determination, the resultant NFF value would be different by the full 0.5¢ per kWh
112 mitigation amount.

113

113 Q IF THE RESULTANT MARKET VALUE REFLECTS SOME OR ALL OF
114 THE MITIGATION AMOUNT, SHOULD AN ADJUSTMENT TO THE
115 RESIDUAL MARKET VALUE BE MADE TO ELIMINATE THE
116 MITIGATION AMOUNT?

117 A No. It is my understanding, based on advice of counsel, that such an additional
118 adjustment would be inconsistent with the provisions of Section 16-112(c) of the Act,
119 which calls for deductions for charges for delivery services, transition charges, and
120 charges for services, if any, other than the provision of power and energy or delivery
121 services. Mitigation factor savings are not a part of the identified charges.

122

123 Q ARE THERE ANY OTHER ASPECTS OF MR. HASTINGS' EXHIBIT 1.2 ON
124 WHICH YOU WOULD LIKE TO COMMENT?

125 A Yes. Even though it is just an example of unbundling, IP Exhibit 1.2 highlights a
126 troubling issue. Mr. Hastings uses a different base revenue charge (5.0¢ per kWh)
127 than he has shown as the retail contract price (4.5¢ per kWh). As I understand it, and
128 on the advise of counsel, the base revenue to be used in transition charge calculations
129 is embodied within Subsection 1 of the definition of transition charge in Section 16-
130 102 of the Act. This Subsection defines the base revenue component as follows (in
131 pertinent part):

132 The amount of revenue that an electric utility would receive from the
133 retail customer or customers if it were serving such customers' electric
134 power and energy requirements as a tariffed service based on (A) all of
135 the customers' actual usage during the 3 years ending 90 days prior to
136 the date on which such customers were first eligible for delivery
137 services pursuant to Section 16-104 and (B) on (ii) to the extent
138 applicable, any contract rates. under which such customers were

receiving electric power and energy from the electric utility during such year. (emphasis added)

The term “such year” refers to “the year immediately preceding the date on which such customers were first eligible for delivery service pursuant to Section 16-104.”

Based on this, the base revenue in Mr. Hastings’s example should be 4.5¢ per kWh, not 5.0¢ per kWh, in the case where the contract rate was in place during the year immediately preceding the date on which customers were first eligible for delivery service. The following table illustrates this concept.

Derivation of Market Value for Retail Contract	
<u>Unbundling Example</u>	
A)	Transition Charge Estimation Process
4.5	Base Revenue
0.4	Delivery Service Revenues
<u>3.0</u>	[NFF] market value from latest NFF report
1.1	Lost Revenue
<u>0.5</u>	Mitigation Amount
0.6	Transition Charge
B)	Determination of Market Value
4.5	Retail Contract Price
0.4	Delivery Service Revenues
<u>0.6</u>	Transition Charge
3.5	Market Value

149 **Q IS YOUR CONCERN APPLICABLE FOR CONTRACTS ENTERED INTO**
150 **SUBSEQUENT TO CUSTOMERS' FIRST ELIGIBILITY FOR DELIVERY**
151 **SERVICE?**

152 A No. In that circumstance, Mr. Hastings' illustration would be apt. However,
153 according to Table 2 of the ICC's January report "Assessment of Competition in the
154 Illinois Electric Industry Three Months Following the Initiation of Restructuring," as
155 of December 31, 1999, nearly 900 discretionary contracts were signed with Illinois
156 utilities, including 571 by IP. It would strain credibility to suggest that all of these
157 contracts were entered into after October 1, 1999.

158

159 **Q WHAT IS YOUR RECOMMENDATION IN THIS REGARD?**

160 A I recommend that the Commission and the NFF should take great care to ensure that
161 transition charges used in unbundling retail contracts are properly calculated, using the
162 appropriate base revenue figures as prescribed by law, pursuant to their audit authority
163 granted under Section 16-112(j) of the Act.

164

165 **Q AT PAGE FOUR OF HIS TESTIMONY, MR. HASTINGS SUGGESTS THAT**
166 **ONLY RETAIL CONTRACTS WHERE A SPECIFIC ASSUMPTION OF**
167 **MARKET PRICE WAS USED TO SET THE BUNDLED RATE SHOULD BE**
168 **CONSIDERED BY THE NFF. DO YOU CARE TO COMMENT?**

169 A Yes. Assumptions about market price made in prior periods by one or more parties in
170 the negotiation process should not be used. These assumptions would be difficult, if
171 not impossible, to verify and would have no bearing on the actual market value of
172 freed up capacity and energy in later periods.

173 Q MR. HASTINGS GOES ON TO STATE THAT THE BEST RECOURSE FOR
174 ELIMINATING THIS PROBLEM WOULD BE TO ELIMINATE FROM
175 CONSIDERATION CONTRACTS WHERE NO ASSUMPTION OF **MARKET**
176 PRICE WAS MADE SINCE INCLUDING THEM WOULD PERPETUATE
177 THE PRIOR YEAR'S NFF VALUE. DO YOU AGREE?

178 A No. As I have previously illustrated, these contracts do not "perpetuate" the prior
179 year's NFF value unless a specific assumption about the contract price (e.g., 0.5¢ per
180 kWh less than the base rate) is made.

181

182 **Response to ComEd Witness Feerick**

183 Q IS THERE ANY OTHER ITEM THAT YOU WOULD LIKE TO RESPOND TO
184 AT THIS TIME?

185 A Yes. I have reviewed Mr. Feerick's descriptions of the reliabilities of the various
186 reportable wholesale contracts. I see nothing in his testimony that warrants the
187 Commission reversing its decision on reporting the distinctions and levels of firmness
188 among the various products, as specified in its Order in Docket No. 98-0769.

189

190 Q DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

191 A Yes. it does.

Qualifications of Robert R. Stephens

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A Robert R. Stephens. My business mailing address is P. O. Box 412000, 1215 Fern**
3 **Ridge Parkway, Suite 208, St. Louis, Missouri 63 141-2000.**

4
5 **Q PLEASE STATE YOUR OCCUPATION.**

6 **A I am a consultant in the field of public utility regulation with the firm of Brubaker &**
7 **Associates, Inc., energy, economic and regulatory consultants. My title is Senior**
8 **Consultant.**

9
10 **Q PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND**
11 **EXPERIENCE.**

12 **A I graduated from Southern Illinois University at Carbondale in 1984 with a Bachelor**
13 **of Science degree in Engineering. During college, I was employed by Central Illinois**
14 **Public Service Company in the Gas Department. Upon graduation, I accepted a**
15 **position as a Mechanical Engineer at the Illinois Department of Energy and Natural**
16 **Resources. In the summer of 1986, I accepted a position as Energy Planner with City**
17 **Water, Light and Power, a municipal electric and water utility in Springfield, Illinois.**
18 **My duties centered on integrated resource planning and the design and administration**
19 **of load management programs.**

20 From July 1989 to June 1994, I was employed as a Senior Economic Analyst
21 in the Planning and Operations Department of the Staff of the ICC. In this position, I
22 reviewed utility filings and prepared various reports and testimony for use by the ICC.

From June 1994 to August 1997, I worked directly with a Commissioner as an Executive Assistant. In this role, I provided technical and policy analyses on a broad spectrum of issues related to the electric, gas, telecommunications and water utility industries.

In May 1996, I graduated from the University of Illinois at Springfield with a Master of Business Administration degree.

In August 1997, I joined Brubaker & Associates, Inc. as a Consultant. Since that time, I have participated in the analysis of various utility rate and restructuring matters in several states and the evaluation of power supply proposals for clients.

The firm of Brubaker & Associates, Inc. provides consulting services in the field of energy procurement and public utility regulation to many clients, including large industrial and institutional customers, some utilities, and on occasion, state regulatory agencies. More specifically, we provide analysis of energy procurement options based on consideration of prices and reliability as related to the needs of the client; prepare rate, feasibility, economic and cost of service studies relating to energy and utility services; prepare depreciation and feasibility studies relating to utility service; assist in contract negotiations for utility services; and provide technical support to legislative activities.

In addition to our main office in St. Louis, the firm also has branch offices in Kerrville, Texas; Plano, Texas; Denver, Colorado; Chicago, Illinois; and Washington, DC.